

SAVE OUR ECOSYSTEMS, INC.

IBLA 82-614

Decided December 5, 1984

Appeal from a decision of the Eugene, Oregon, District Manager, Bureau of Land Management, finding that a proposed vegetation management program for rights-of-way involves no significant environmental impacts.

Vacated and remanded.

1. Environmental Quality: Environmental Statements -- Environmental Quality: Herbicides -- National Environmental Policy Act of 1969: Environmental Statements

A decision to implement a vegetative management program affecting rights-of-way including application of the herbicide 2,4-D will be vacated where it is based upon an environmental analysis which does not include a worst case analysis as required by 40 CFR 1502.22, and which fails to document possible effects of proposed spraying upon the human environment.

2. Environmental Quality: Environmental Statements -- Environmental Quality: Herbicides -- National Environmental Policy Act of 1969: Environmental Statements

Where a programmatic environmental impact statement has been completed and has been supplemented by a site-specific environmental assessment discussing the impacts, mitigating measures, and alternatives for specified spraying projects, which form the basis for a final decision to use herbicides, including 2,4-D, the environmental assessment must also contain a worst case analysis pursuant to 40 CFR 1502.22.

APPEARANCES: Michael Slattery for appellant; Eugene A. Briggs, Esq., Office of the Solicitor, United States Department of the Interior, Portland, Oregon, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Save Our ecoSystems, Inc. (SOS), appeals from a decision of the Eugene, Oregon, District Manager, Bureau of Land Management (BLM), dated February 19, 1982, finding that BLM's proposed vegetation management for rights-of-way involved no significant impacts beyond those previously analyzed

in the Department's 10-year environmental impact statement (EIS), entitled Vegetation Management with Herbicides: Western Oregon, 1978 through 1987. On March 15, 1979, Secretary Andrus approved the use of herbicides (except silvex) for vegetation management, an option discussed in the EIS. The District Manager's decision approved the application of Environmental Protection Agency-registered herbicides, including 2,4-D, on 77 acres of right-of-way lands in the Eugene District and approved the mechanical brushcutting of another 772 acres. The objectives of BLM's right-of-way treatment program are to maintain the safety of roads, to clear powerlines of undesirable trees, and to reduce fire hazards on railroad rights-of-way. These objectives are set forth in a site-specific environmental assessment (EA) prepared by BLM describing its 1982 vegetation management program. This EA described the proposed action, its environmental impacts, alternative actions, their environmental impacts, and mitigating measures.

The EA was prepared pursuant to a direction in the 10-year EIS that each district office annually prepare an environmental assessment of its proposed herbicide use. Information developed in the EIS is supplemented by the site-specific data of the EA. This process is referred to as a "tiered" approach to the decisionmaking process. The actual decision from which appeal is taken in these cases appears in the EA. For a description of effect upon the review process which this approach imparts, see Dolores M. Lisman, 67 IBLA 72, 74 (1982).

Appellant did not submit comments on BLM's proposed right-of-way program, but states it did submit comments on the adverse environmental impacts of herbicide use in the Eugene District. It asks that the Board review these impacts, which appellant feels were inadequately addressed in the EA, and also review the District Manager's finding that the proposed right-of-way management program involves no significant impacts beyond those analyzed in the EIS. Appellant also refers to its statement of reasons submitted in IBLA 82-410, recently decided at Save Our ecoSystems, Inc., 81 IBLA 326 (1984). Appellant also contends a site-specific EIS should have been prepared.

In Dolores M. Lisman, *supra*, the Board found that implementation of the Secretary's decision to use herbicides may give rise to issues entirely outside the scope of that decision. One issue mentioned in Lisman was whether a BLM District Office had adequately considered alternatives to herbicide use at a particular site. See also SOCATS (On Reconsideration), 72 IBLA 9 (1983). In Lisman, we noted that our approach to reviewing appeals of the present type was consistent with our duty to insure that, in preparing an environmental assessment, BLM has developed a reviewable record reflecting consideration of "all relevant factors." Lane County Audubon Society, 55 IBLA 171 (1981); see Hanly v. Mitchell, 460 F.2d 640, 648 (2d Cir.), *cert. denied*, 409 U.S. 990 (1972); Elaine Mikels, 44 IBLA 51 (1979).

[1, 2] Recently, in Southern Oregon Citizens v. Clark (SOCATS), 720 F.2d 1475 (9th Cir. 1983, *cert. denied*, Nov. 13, 1984, 53 U.S.L.W. 3357), and Save Our ecoSystems, Inc. (SOS) v. Clark, No. 83-3908 (9th Cir. Jan. 27, 1984), the application of the "worst case analysis regulation," 40 CFR 1502.22, was considered in several cases where herbicidal spraying by BLM and the Forest Service had previously been enjoined by action of the Oregon District Court.

These decisions were applied by this Board in Save Our ecoSystems, Inc., 81 IBLA 326 (1984), in a situation nearly identical to that involved in this appeal. The Board's opinion, at 81 IBLA 328, finds the SOCATS decision controlling where, as here, there has been a failure by BLM to apply the "worst case analysis" provisions of 40 CFR 1502.22 to a proposal to use herbicides, including 2,4-D, to control vegetation on public lands in Oregon. The decisions of the Ninth Circuit Court of Appeals clearly hold that uncertainty about the effect upon the human environment of the use of herbicides, including 2,4-D, requires a "worst case analysis" to be made as part of the EA, in cases such as this one where a "tiered" method of decisionmaking is used to comply with the National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4321 (1982). ^{1/} Since, in this case as in Save Our ecoSystems, Inc., supra, the decision to implement a vegetative spraying program with the use of herbicides including 2,4-D was not assessed on the basis of a possible "worst case analysis" of the effects of the spraying, the matter must be remanded to BLM for preparation of an adequate EA. See Save Our ecoSystems, Inc., supra at 328-30.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Eugene District Manager is vacated and the case is remanded for action consistent with this opinion.

Franklin D. Arness
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Bruce R. Harris
Administrative Judge

^{1/} In this case, therefore, the EA is to be treated as an environmental impact statement, so far as notice to the public is concerned, and the requirement of a 45-day comment period applies. 40 CFR 1506.10(c); SOS v. Clark, supra, slip op. at 9-10.

